

1985 No. 1922

PENSIONS

The Local Government Superannuation (Overseas Employment) Regulations 1985

<i>Made</i> - - - - -	9th December 1985
<i>Laid before Parliament</i>	16th December 1985
<i>Coming into Operation</i>	6th January 1986

The Secretary of State for the Environment, in exercise of the powers conferred upon him by sections 7, 8(3) and 12 of the Superannuation Act 1972(a), and of all other powers enabling him in that behalf, after consultation with such associations of local authorities as appeared to him to be concerned, the local authorities with whom consultation appeared to him to be desirable, and such representatives of other persons likely to be affected by the regulations as appeared to him to be appropriate, hereby makes the following regulations:—

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Local Government Superannuation (Overseas Employment) Regulations 1985 and shall come into operation on 6th January 1986.

(2) In these regulations, unless the context otherwise requires—

“the overseas interchange rules” means the Superannuation (Local Government and Colonial Service) Interchange Rules 1949(b) (“the 1949 rules”), the Superannuation (Local Government, Commonwealth and Foreign Service) Interchange Rules 1952(c) (“the 1952 rules”), the Superannuation (Local Government and Overseas Employment) Interchange Rules 1958(d) (“the 1958 rules”), and the Superannuation (Local Government and Overseas Employment) Interchange Rules 1969(e) (“the 1969 rules”);

“the overseas transfer provisions” means rule 2 of the 1949 rules, rule 2 of the 1952 rules, rule 4 of the 1958 rules and Part II of the 1969 rules;

“the re-entry provisions” means rule 3 of the 1949 rules, rule 3 of the 1952 rules, rule 5 of the 1958 rules and Part III of the 1969 rules;

(a) 1972 c. 11.

(b) S.I. 1949/1463.

(c) S.I. 1952/133.

(d) S.I. 1958/1416, amended by S.I. 1961/770.

(e) S.I. 1969/975.

“the 1974 regulations” means the Local Government Superannuation Regulations 1974**(a)**;

“the 1977 regulations” means the Local Government Superannuation (City of London) Regulations 1977**(b)**;

“the local Act superannuation provisions” and “the local Act superannuation fund” have the same meanings as in the 1977 regulations; and

“the relevant date” means—

- (a) in relation to a person’s ceasing to hold an employment in which he was a contributor to the local Act superannuation fund, 1st October 1977, and
- (b) in relation to a person’s ceasing to hold any other local government employment, 1st April 1974;

and any expression which is also used in the 1974 regulations has the same meaning as in those regulations.

Persons leaving local government employment before 31st March 1972

2.—(1) This regulation applies to a person—

- (a) who before 31st March 1972 ceased to hold a local government employment, and
- (b) to whom any of the overseas transfer provisions—
 - (i) became applicable, or
 - (ii) could have become applicable but for the 1974 regulations or the 1977 regulations, and
- (c) to or in respect of whom no benefit became payable before the relevant date under any of the overseas transfer provisions, and
- (d) to whom none of the re-entry provisions became applicable before the relevant date.

(2) A person to whom this regulation applies shall, unless he elects as mentioned in paragraph (3), be treated as if in relation to him—

- (a) the former regulations or, as the case may be, the local Act superannuation provisions or other local Act scheme had continued to have effect from the relevant date until immediately before the day, if any, on which he re-entered local government employment, and
- (b) the overseas interchange rules had from the relevant date had effect with the modifications set out in Parts I and II of the Schedule.

(3) A person to whom this regulation applies may elect to be treated as if in relation to him—

- (a) the former regulations or, as the case may be, the local Act superannuation provisions or other local Act scheme had continued to have effect from the relevant date until immediately before the day, if any, on which he re-entered local government employment, and
- (b) the overseas interchange rules had from the relevant date had effect with the modifications set out in Part I of the Schedule.

(a) S.I. 1974/520; relevant amendments were made by S.I. 1979/1534, 1981/1250.

(b) S.I. 1977/1341.

Persons leaving local government employment after 30th March 1972 and before the relevant date

3.—(1) This regulation applies to a person—

- (a) who after 30th March 1972 and before the relevant date ceased to hold a local government employment, and
- (b) who did not in relation to that employment become entitled, by virtue of Part K of the 1974 regulations, to benefits under regulation E2(1)(c) of those regulations (preserved benefits), and
- (c) to whom any of the overseas transfer provisions—
 - (i) became applicable, or
 - (ii) could have become applicable but for the 1974 regulations or the 1977 regulations, and
- (d) to whom none of the re-entry provisions became applicable before the relevant date.

(2) A person to whom this regulation applies shall, unless he elects as mentioned in paragraph (3), be treated as if in relation to him—

- (a) the overseas transfer provisions had not become, or as the case may be had not been capable of becoming, applicable to him, and
- (b) the 1974 regulations had had effect with the modifications set out in Part III of the Schedule.

(3) A person to whom this regulation applies may elect to be treated as if in relation to him—

- (a) the former regulations, or, as the case may be, the local Act superannuation provisions or other local Act scheme had continued to have effect from the relevant date until immediately before the day, if any, on which he re-entered local government employment, and
- (b) the overseas interchange rules had from the relevant date had effect with the modifications set out in Part I of the Schedule.

Elections

4.—(1) An election under these regulations is to be made by giving notice in writing to the authority who for the time being maintain the superannuation fund to which the person last contributed before entering overseas employment; and notice is, subject to paragraph (3), to be given within 12 months after 6th January 1986 or such longer period as the Secretary of State may allow.

(2) Any right to make an election conferred on a person by these regulations may, if he died before 6th January 1986 or dies within 12 months after that date without making an election, be exercised—

- (a) if the person was a man and has left a widow, by her,
- (b) if the person was a man and has not left a widow, or his widow has died without making an election, by his personal representatives, and
- (c) if the person was a woman, by her personal representatives.

(3) Notice of an election made by a person's widow or personal representatives is to be given within 12 months after—

- (a) 6th January 1986, or
- (b) the date of his death if later,

or such longer period as the Secretary of State may allow.

Right of appeal

5. The provisions of Part H of the 1974 regulations (determination of questions and appeals) shall apply in relation to rights and liabilities under these regulations as they apply in relation to rights and liabilities under the 1974 regulations.

SCHEDULE

MODIFICATION OF RULES AND REGULATIONS

PART I

Modifications to overseas interchange rules in all cases where regulation 2 applies and in cases where regulation 3 applies and an election is made under regulation 3(3)

1. In this Schedule "overseas employment" means—
 - (a) employment which was certified by the Secretary of State for the purposes of the 1949 rules,
 - (b) approved employment within the meaning of the 1952 rules, and
 - (c) overseas employment within the meaning of the 1958 rules or the 1969 rules.
2. References in the overseas transfer provisions and in the re-entry provisions—
 - (a) to the first fund authority, and
 - (b) to the authority maintaining the superannuation fund to which a person was formerly a contributor,

are to be construed as references to the authority for the time being maintaining the fund to which the person last contributed before entering overseas employment.

3. All benefits payable under the overseas transfer provisions are to be calculated in accordance with the former regulations, or as the case may be the person's local Act scheme, as in force on the date on which he ceased to hold his local government employment.

4. The reference in rule 12 of the 1969 rules to a transfer value is to be construed as a reference to a transfer value paid under or in anticipation of Part N of the 1974 regulations.

5. References in the re-entry provisions to a person's entering within a specified or prescribed period—

- (a) local government employment, or
 - (b) employment in which he is subject to the Act of 1937 or a local Act scheme,
- are to be construed as references to his entering at any time employment in which he becomes a pensionable employee.

6. Where by virtue of the re-entry provisions a person would become entitled to reckon any service or period as contributing service or as non-contributing service, he is to be treated as becoming entitled to reckon it as reckonable service for the purposes of the 1974 regulations.

7. Where by virtue of the re-entry provisions a person would become entitled to reckon a period of overseas employment as service for the purpose of determining whether he was entitled—

(a) to a benefit under the Act of 1937, or

(b) to a benefit under the Act of 1937 or a local Act scheme,

but for no other purpose, he is to be treated as becoming entitled to reckon it as qualifying service for the purposes of the 1974 regulations.

8. References in the re-entry provisions—

(a) to provisions of the Act of 1937,

(b) to the transfer value regulations, and

(c) to the regulations for the time being in force under section 29 of the Act of 1937,

are to be construed as references to the corresponding provisions of the 1974 regulations.

9. The reference in rule 11(2) of the 1969 rules to the second fund authority is to be construed as a reference to the authority for the time being maintaining the appropriate superannuation fund under the 1974 regulations.

PART II

Modifications to overseas interchange rules where no election is made under regulation 2(3)

10. For the purposes of this Part a person's service includes his period of overseas employment and any period by which the overseas transfer provisions notionally extend that period.

11.—(1) The overseas transfer provisions are to be treated as continuing to apply notwithstanding any break in overseas employment, whether or not the relevant authority have been notified and whether or not any amount paid by way of return of contributions has been repaid.

(2) Where such an amount has been paid and has not been repaid, any benefits becoming payable by virtue of paragraph 14 or otherwise are to be reduced by that amount.

12. References in the overseas transfer provisions to circumstances, including any assumption as to age, in which a person would have been entitled to a benefit under the Act of 1937, or under that Act or a local Act scheme, are to be construed as references to his having—

(a) attained the age of 60 years and completed 25 years' service, or

(b) attained the age of 65 years and completed 5 years' service, or

(c) completed 5 years' service and become incapable of discharging the duties of his former local government employment by reason of permanent ill-health or infirmity of mind or body.

13. Provisions of the 1949 rules and the 1958 rules entitling a person to the immediate payment of a reduced benefit are, unless effect has been given to them before 6th January 1986, to be construed as entitling him instead to request such a payment.

14. Where a person to whom the overseas transfer provisions apply—

- (a) has completed 5 years' service, and
- (b) if he has ceased, in whatever circumstances, to hold an overseas employment, did not become entitled under those provisions to the immediate payment of an unreduced benefit and did not receive, or exercise any right he may have had to request, the immediate payment of a reduced benefit,

the overseas transfer provisions are to be treated as entitling him to the payment of an unreduced benefit when the circumstances mentioned in paragraph 12 first obtain.

15. For the purposes of overseas transfer provisions concerning the benefits to be paid in respect of a person who has died—

- (a) if he died after leaving overseas employment but before becoming entitled to payment of a benefit, whether by virtue of paragraph 14 or otherwise, he is to be treated as having died while in overseas employment, and
- (b) references to his having become entitled to a benefit include references to his having become entitled to payment of a benefit by virtue of paragraph 14.

16. Where a person to whom overseas transfer provisions in the 1949 rules, the 1952 rules or the 1958 rules apply has ceased to hold overseas employment, and has entered other employment in such circumstances that the authority mentioned in paragraph 2 have paid a transfer value in respect of him under or in anticipation of Part N of the 1974 regulations, those overseas transfer provisions are to be treated as having ceased to apply to him.

PART III

Modifications to 1974 regulations where no election is made under regulation 3(3)

17. In regulation D1(2) (certain previous service reckonable on repayment of returned contributions) for "12 months after the appointed day" substitute "12 months after 6th January 1986".

18. In regulation D2 (qualifying service), after paragraph (c) insert:

"(cc) any period which, if Part II of the Superannuation (Local Government and Overseas Employment) Interchange Rules 1969 had applied to him, would have been a period of overseas employment within the meaning of those rules; and".

19. In regulation E2 (entitlement to retirement pension and retiring allowance)—

(a) in paragraph (1)(c), as applied by regulation K1, delete the words from "and either" to "regulation C8";

(b) after paragraph (4)(b) insert—

"(bb) if the total of his reckonable service and qualifying service is less than 5 years;";

(c) in paragraph (4)(e), after the words "becoming a pensionable employee" insert "or after 6th January 1986 if later,"; and

(d) after paragraph (4)(e) insert:

"(4A) Where paragraph (4)(bb) applies, no notice may be given under paragraph (4)(e).".

Kenneth Baker,
Secretary of State for the Environment.

9th December 1985.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These regulations make provision about superannuation rights. They concern persons who before 1st April 1974 left employment in which they were subject to the Local Government Superannuation Acts 1937 to 1953 (1937 c.68, 1939 c.18, 1953 c.25) or to a local Act scheme other than the one maintained by the City of London, or who were contributors to the City's local Act scheme and left the City's employment before 1st October 1977; and who in either case subsequently entered overseas employment.

In all these situations provision was made by rules for interchange between local government and overseas employment.

The provision now made differs according to the time at which the person left local government employment and whether he does or does not make an election under regulation 2(3) or 3(3). Both those leaving before 31st March 1972 (to whom regulation 2 applies) and those leaving after 30th March 1972 but before the relevant date mentioned in the first paragraph (to whom regulation 3 applies) may elect to remain subject to the relevant overseas interchange rules with the modifications set out in Part I of the Schedule. Those leaving before 31st March 1972, and who do not so elect, become subject to a more extensively modified application of the interchange rules (Parts I and II of the Schedule). Later leavers who do not so elect are treated as not having become subject to the interchange rules and the application to them of the Local Government Superannuation Regulations 1974 is so modified (Part III of the Schedule) as to produce certain entitlements to preserved benefits.

Section 12 of the Superannuation Act 1972 confers express power to make regulations retrospective in effect. These regulations are to a large extent retrospective, but only confer additional benefits on ex-employees.

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